NO. 20730

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH CARL PARROTT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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I

JURISDICTIONAL STATEMENT

Appellant Joseph Carl Parrott was indicted by the Federal Grand Jury for the Southern District of California, Central Division, on October 27, 1965, in Case No. 35430-CD. [C. T. 2][1/] The Indictment charged a violation of Title 50, App., United States Code, Section 462, Universal Military Training & Service Act; Refusal to Perform Civilian Work Assignment.

On November 8, 1965, appellant was arraigned before the Honorable E. Avery Crary, United States District Court Judge, and entered a plea of not guilty. [C. T. 4]. Appellant was represented by counsel at all stages of the proceedings. On November

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1/ "C. T." refers to Clerk's Transcript of Record.

22, 1965, Case No. 35430-CD was called for trial before the Honorable Peirson M. Hall, United States District Court Judge. Trial by jury was waived. [R. T. 4] 2/ On the same date, appellant was found guilty as charged [R. T. 13]. On December 6, 1965, appellant was sentenced to the custody of the Attorney General for a term of three years [C. T. 15]. A timely notice of appeal was filed on December 6, 1965 [C. T. 18].

Jurisdiction of the trial court was founded upon Title 50, Appendix, United States Code, Section 462, and Title 18, United States Code, Section 3231. This court has jurisdiction pursuant to Title 28, United States Code, Sections 1291, 1294.

II

STATUTES INVOLVED

Title 50 Appendix, Section 462, United States Code, provides in pertinent part as follows:

> "Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title . . . or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who otherwise evades or refuses . . . service in the

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2/ "R. T." refers to Reporter's Transcript of Record.

armed forces or any of the requirements of this title . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title . . . or rules, regulations or directions made pursuant to this title . . . shall, upon conviction in any District Court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both . . . "

Title 50 Appendix, Section 456(j) states:

"(j) Conscientious objectors. -- Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service,

because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title."

III

STATEMENT OF FACTS

At the time of trial of this case the certified photocopy of the appellant's selective service file was offered and admitted into evidence as Government's Exhibit No. 1 [R. T. 4-7]. This file and the testimony of appellant during trial revealed the following events with respect to appellant's registration status in the

Selective Service System:

Appellant registered with Local Board No. 134 (hereinafter referred to as the "Board") in Orange County, on March 6, 1961 (pp. 1, 2). [3/] The Board assigned appellant the following classifications on the dates indicated:

April 13, 1964 -- Class I-A;

February 11, 1965 -- Class I-O. (p. 2).

On February 18, 1965, the Board mailed to appellant for completion the form entitled Special Report for Class I-O Registrants (SSS Form 150). On March 15, 1965, the appellant returned this questionnaire to the Board along with a letter which stated, inter alia, "That by accepting civilian work I would also be participating as a noncombatant with the Armed Forces. It is my belief that in the event of war any job which I hold, that may have been held by someone else, would be freeing that person for combat just as in World War II, the United States used many men to perform duties that were normally handled by men."

On April 22, 1965, the Board mailed a letter to appellant which offered appellant a choice of three different types of civilian work which appellant could perform in lieu of induction. Appellant never returned this letter. On June 15, 1965, pursuant to order of the Board, appellant met with members of the Board and a representative of the State Director of the Selective Service. At this meeting appellant was questioned at length about his refusal

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3/ Refers to pages of Appellant's Selective Service File, Government's Exhibit No. 1.

to accept any type of work and was asked whether or not he wished to see a list of other jobs that were available in addition to the three enumerated in the Board's letter of April 22, 1965. Appellant stated that he did not wish to see the list and that he was refusing to accept any type of work. Appellant signed a statement to this effect (pp. 88-89).

Thereafter, on August 2, 1965, the Board ordered appellant to report for civilian work assignment at the Los Angeles County Department of Charities, 1200 North State Street, Los Angeles, California, where work as an institutional helper was available for appellant (p. 96).

On August 3, 1965, appellant reported for work at the Los Angeles County Department of Charities, however, at that time he refused any and all civilian work assignments (p. 97).

IV

QUESTIONS RAISED ON APPEAL

1. Did the trial court err in admitting in evidence the Selective Service File of the appellant?

2. Was there a basis in fact for the Local Board's rejection of the classification claim of appellant?

V.

ARGUMENT

A. THE TRIAL COURT PROPERLY ADMITTED INTO EVIDENCE THE CERTIFIED PHOTOGRAPHIC COPY OF THE APPELLANT'S OFFICIAL SELECTIVE SERVICE FILE.

Rule 44(a), Federal Rules of Civil Procedure, provides that an official record of an entry therein, when admissible for any purpose, may be evidenced by a copy attested by the officer having legal custody of the record, and accompanied with a certificate that such office in which the record was kept is within the United States. The certificate may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by a seal of his office.

Title 28, United States Code, Section 1733, provides that records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept. Rule 1733 also provides that properly authenticated copies of any books, records, papers, or documents of any department or agency of the United States shall be admitted into evidence equally with the originals thereof.

Rule 27, Federal Rules of Criminal Procedure, provides that an official record or any entry therein may be proved in the same manner as in civil actions.

Appellant contends that the trial court erred by admitting

into evidence the bound photographic copy of his original selective service file. This document had been attested and certified in compliance with the above-mentioned rules of procedure (See Government's Exhibit No. 1).

It is not clear on what grounds appellant contends that the document fell short of conformance with the applicable laws. He cites no case law to support his unique interpretation of Rule 44(a), Federal Rules of Civil Procedure, and Section 1733, United States Code, Title 28, nor does he specify what section of the statutes make certified copies of appellant's selective service file inadmissible.

This Circuit has previously approved the proposition that a duly authenticated copy of the registrant's Selective Service file is admissible in a prosecution for violation of Title 50, Appendix, United States Code, Section 462.

Yaich v. United States, 283 F. 2d 613 (9th Cir. 1960);

Kariakin v. United States, 261 F. 2d 263 (9th Cir. 1958);

LaPorte v. United States, 300 F. 2d 878 (9th Cir. 1962);

Olender v. United States, 210 F. 2d 795 (9th Cir. 1954).

See also: United States v. Borisuk, 206 F. 2d 338 (3rd Cir. 1953).

Appellant implies that the only way to properly introduce a registrant's selective service file into evidence is to bring in to

court each and every individual who has at one time worked on the file, or had the file in his office (Opening Brief, 7-8). Such a procedure would uselessly impede the swift trial of such cases, and would clearly conflict with the purpose of Section 1733, Title 28, United States Code.

Wong Wing Fee v. McGrath, 196 F.2d 120, 123 (9th Cir. 1952).

B. APPELLANT WAS PROPERLY CLASSIFIED I-O WHEN HE WAS ORDERED TO REPORT FOR CIVILIAN WORK.

A court may not interfere with a registrant's classification unless it finds that there is no basis in fact for the classification or that the Local Board acted so arbitrarily and capriciously that the registrant was denied due process.

Witmer v. United States, 348 U.S. 375, 381 (1955);
Dickinson v. United States, 346 U.S. 389 (1953);
Estep v. United States, 327 U.S. 114, 122 (1946);
Cox v. United States, 332 U.S. 442, 448 (1947);
Rogers v. United States, 263 F.2d 283, 285 (9th Cir. 1959).

A "basis in fact" means one having significance within the legal framework governing selective service classifications.

Badger v. United States, 322 F.2d 902, 907 (9th Cir. 1963)

In Dickinson v. United States, supra, -- which the appellant

relies on so heavily -- the Supreme Court quoted with approval the following language from Estep v. United States, 327 U. S. 114, 122-123 (1946):

> ". . . The courts are not to weigh the evidence to determine if the classifications made by the local boards are justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave to the registrant."

Dickinson involved a Jehovah's Witness who was classified I-A after he had qualified and been certified as a "Pioneer Minister" of that Sect, devoting over 150 hours per month to his ministerial work. The Supreme Court reversed the Ninth Circuit's upholding of the 1-A classification, and ordered the petitioner classified IV-D.

> "The task of the Court in such cases is to search the record for some affirmative evidence to support the local board's finding that a registrant has not painted a complete or accurate picture of his activities."
>
> Dickinson v. United States, supra, 396.

See also: Witmer v. United States, 348 U. S. 378 (1955)

Although no such evidence was found in Dickinson, it is submitted that it was plentiful in appellant's case. Careful examination by an appeal examiner disclosed that appellant could not be considered a regular or duly ordained minister of religion.

> "Each registrant must satisfy the [Selective Service] Act's rigid criteria for the exemption. Preaching and teaching the principals of one's Sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to bring a registrant under No. 6(g). These activities must be regularly performed. They must, as the statute reads, comprise the registrant's 'vocation'. And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption."
>
> Dickinson v. United States, supra 395; quoted in Badger v. United States, supra at 906.

Appellant cites no cases where a Jehovah's Witness, doing the amount and type of work done by appellant, was given a minister's classification. On the contrary, a number of courts have refused to award IV-D classifications to Jehovah's Witnesses performing work similar to appellant's, but not "Pioneer Ministers".

Fitts v. United States, 334 F. 2d 414 (5th Cir. 1964);

United States v. Tettenburn, 186 F. Supp. 803;

United States v. Kezmes, 125 F. Supp. 130

(D. Penn. 1954).

"Certainly all members of a religious organization or Sect are not entitled to the exemption by reason of their membership, even though, in their belief, each is a minister."

Dickinson v. United States, supra, 394.

VI

CONCLUSION

For the reasons stated, the trial court's decision should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Gabriel A. Gutierrez
GABRIEL A. GUTIERREZ